

**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF NEW YORK  
PRO SE OFFICE  
U.S. COURTHOUSE  
225 CADMAN PLAZA EAST  
BROOKLYN, NEW YORK 11201**

**November 14, 2019**

**Sai  
MuckRock News  
Dept. MR 82207  
411A Highland Avenue  
Somerville, MA 02144-2516**

**Dear Sai,**

**This is in response to the letter we received from you on November 13, 2019. The Court cannot grant the request as presented. If you want records for a particular case, provide a case number and indicate the documents you would like a copy of. Your request will be forwarded to the Electronic Sound Recording department for assistance.**

**Sincerely,**

**Pro Se Office**



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United States District Court, Eastern District of New York  
FOIL Office  
225 Cadman Plaza East  
Brooklyn, NY 11201

November 4, 2019

Dear United States District Court, Eastern District of New York,

#### # Background

Court reporters are required to record virtually all court proceedings.

However, reporters are only required to create a transcript for some of those proceedings. Some are required by law, some must be paid by the United States, and some must or may be paid for by a party. If created, all such transcripts are part of the public record maintained by the Clerk.

Reporters can only charge for the cost of transcribing -- not for the original recordings, nor for transcriptions that have been made.

28 U.S.C. § 753 makes an explicit distinction in which transcripts a court reporter may charge for, and which not. This request pertains to those records for which additional charge is NOT authorized by § 753.

#### # Legal basis for this request

I recognize that the judiciary is not covered by the Freedom of Information Act.

This request is made pursuant to:

- a) the First Amendment and common law rights of access to judicial records;
- b) 28 U.S.C. § 753; and
- c) the Judiciary's internal policies which provide for access to records in a way similar to the Freedom of Information Act.

#### # Request

I hereby request all of the following records that are dated on or after January 1, 2010, as described in 28 U.S.C. § 753 (which is the source of all quotes here):

1. certified "original shorthand notes or other original records so taken" of all proceedings, including

original electronic sound recordings;

2. if there is no original "electronic sound recording":

- a) the certified transcript of "such parts of the record of proceedings as may be required by any rule or order of court, including all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases", and
- b) the certified transcript of "other parts of the record of proceedings as may be required by rule or order of court";

3. certified transcripts in all:

- a) "criminal proceedings to persons proceeding under the Criminal Justice Act (18 U.S.C. 3006A)"
- b) "habeas corpus proceedings" involving an IFP party;
- c) "proceedings brought under [28 U.S.C. §] 2255" involving an IFP party, "if the trial judge or a circuit judge certifie[d] that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal"; and
- d) "other proceedings" involving an IFP party, "if the trial judge or a circuit judge certifie[d] that the appeal is not frivolous (but presents a substantial question)";

4. certified transcripts which the Clerk has in its records, e.g. where a party has paid for their transcription and therefore the reporter "deliver[ed] to the clerk for the records of the court a certified copy of any transcript so made"; and

5. reporters' records required under § 753(d), including:

- "a) the quantity of transcripts prepared;
- b) the fees charged and the fees collected for transcripts;
- c) any expenses incurred by the reporters in connection with transcripts;
- d) the amount of time the reporters are in attendance upon the courts for the purpose of recording proceedings; and
- e) such other information as the Judicial Conference may require."

## # Argument

1. Recording is mandatory.

Section 753(b) mandates that "[e]ach session of the court and every other proceeding designated by rule or order of the court or by one of the judges shall be recorded verbatim by shorthand, mechanical means, electronic sound recording, or any other method", including "(1) all proceedings in criminal cases had in open court; (2) all proceedings in other cases had in open court unless the parties with the approval of the judge shall agree specifically to the contrary; and (3) such other proceedings as a judge of the court may direct..."

2. Original records, and transcripts of non-recorded hearings are mandatory, public records for which no fee may be charged.

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It then requires that "[t]he reporter or other individual designated to produce the record shall attach his official certificate to the original shorthand notes or other original records so taken and promptly file them with the clerk who shall preserve them in the public records of the court for not less than ten years."

If there is no original "electronic sound recording", the reporter is also required to "transcribe and certify such parts of the record of proceedings as may be required by any rule or order of court, including all arraignments, pleas, and proceedings in connection with the imposition of sentence in criminal cases", as well as to "transcribe and certify such other parts of the record of proceedings as may be required by rule or order of court. "

These are explicitly protected from fees: "The original notes or other original records and the copy of the transcript in the office of the clerk shall be open during office hours to inspection by any person without charge."

So is the transcript delivered to the court, as § 753(f) provides that reporters "shall not charge a fee for any copy of a transcript delivered to the clerk for the records of court".

3. The reporter may charge only for certain transcriptions.

Section 753(b) goes on to authorize fee payment for a subset of transcripts.

Namely, "[u]pon the request of any party to any proceeding which has been so recorded who has agreed to pay the fee therefor, or of a judge of the court, the reporter or other individual designated to produce the record shall promptly transcribe the original records of the requested parts of the proceedings and attach to the transcript his official certificate, and deliver the same to the party or judge making the request. The reporter or other designated individual shall promptly deliver to the clerk for the records of the court a certified copy of any transcript so made."

Section 753(f) provides for fees under limited circumstances. Namely, a "reporter may charge and collect fees for transcripts requested by the parties".

4. Some transcripts must be paid for by the United States, and cannot be charged to others.

Section 753(f) says that the United States shall pay "[f]ees for transcripts furnished in":

a) "criminal proceedings to persons proceeding under the Criminal Justice Act (18 U.S.C. 3006A)"

Additionally, the United States shall pay for, and transcripts provided to, "persons allowed to sue, defend, or appeal in forma pauperis", in:

b) "habeas corpus proceedings";

c) "proceedings brought under [28 U.S.C. §] 2255", "if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal"; and

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d) "other proceedings", "if the trial judge or a circuit judge certifies that the appeal is not frivolous (but presents a substantial question)".

The reporter may *\*not\** require payment for "transcripts that are to be paid for by the United States".

5. Reporters must file other records which are free to the public.

Section 753(d) states that "[t]he Judicial Conference shall prescribe records which shall be maintained and reports which shall be filed by the reporters. Such records shall be inspected and audited in the same manner as the records and accounts of clerks of the district courts, and may include records showing:

- (1) the quantity of transcripts prepared;
- (2) the fees charged and the fees collected for transcripts;
- (3) any expenses incurred by the reporters in connection with transcripts;
- (4) the amount of time the reporters are in attendance upon the courts for the purpose of recording proceedings; and
- (5) such other information as the Judicial Conference may require."

These are public records.

6. Reporters are Government employees, and therefore have no copyright to their work product

As § 753(a, c, & e) make clear, reporters are "subject to the supervision of the appointing court and the Judicial Conference in the performance of their duties", "receive an annual salary", and "shall be considered a full-time employee". Their works are made as salaried Government employees, and thus have no copyright. 17 U.S.C. § 105.

There is, therefore, no authorization for a reporter to limit duplication or require fees; that requires copyright.

#### # Form of production

a) I am partially blind and have other disabilities that interfere with handling paper records. I request that you make all responses by email, and provide records in their original, native electronic format if you have an electronic copy, and by a PDF scan if you only have the records in paper format.

b) For records available on any [uscourts.gov](https://uscourts.gov) website, or on PACER, instead of providing the record itself directly, please provide a spreadsheet in (CSV or Excel format) that identifies such records (e.g. by case ID, ECF #, and date) together with the direct URL of that record.

Direct URLs on PACER will have the form "[https://ecf\[court\].uscourts.gov/doc1/\[document ID\]?caseid=\[case ID\]](https://ecf[court].uscourts.gov/doc1/[document ID]?caseid=[case ID])", where the two IDs are numbers. (URLs of the form

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"https://ecf.[court].uscourts.gov/cgi-bin/DktRpt.pl?[case ID]" are not direct, since they require paying for and searching the docket.)

Please do not just tell me to "search PACER". It's not possible to know all of the records listed above from a PACER search. PACER does not list anything close to the full set of recordings listed above, and there is no way to search it for such proceedings, and case by case search would entail substantial charges for dockets while still not giving the full set.

c) For all other records, i.e. where it is not on uscourts.gov or on PACER, please provide the record itself.

For small records (<10MB), please send them as attachments to the email address of listed below (i.e. just hit "reply").

For all other records, please upload the record at the URL listed below my signature. You may also send a DVD-R containing the electronic files to the addressed listed below.

#### # Fees

My expectation is that the vast majority of records requested are NOT on PACER.

As noted above, I am specifically NOT requesting that you provide any records that are available on PACER -- only links to them. Therefore, the PACER fee schedule does not apply.

To the extent that any fee may apply, please note that this request is:

- a) made on behalf of a 501(c)(3) non-profit (Fiat Fiendum, Inc.; status verifiable at <<https://apps.irs.gov/app/ecs/>>);
- b) not possible for us to afford to pay substantial fees for, since we have only a tiny budget; and
- c) made for the purposes of a bona fide academic research that requires a vast set of judicial data, for which this is one component.

I therefore request a waiver of all such fees.

If the Court ordinarily would require a fee for the records requested but may waive that fee if we provide further information, I request an order from the Court saying so, giving the legal basis for the fee and information requirement, clearly stating what information is required, and attaching an example of a sufficient response.

#### # Conclusion

This request is made on behalf of both myself, Sai (in personal capacity) and Fiat Fiendum, Inc. (in official capacity).

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Fiat Fiendum is a 501(c)(3) nonprofit organization whose purposes include promotion of transparency in laws and research on topics related to the judiciary.

Please note that "Sai" is my full legal name. I am agender. Please do not use any title on my name.

Sincerely,  
Sai  
President, Fiat Fiendum, Inc.

Filed via MuckRock.com  
E-mail (Preferred): 82207-24392847@requests.muckrock.com

For mailed responses, please address (see note):  
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PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.